

EXHIBIT

4

2
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3
4 TRAVELERS CASUALTY AND SURETY COMPANY as
Administrator for RELIANCE INSURANCE
COMPANY,

5
6 Plaintiff,

7 -against-

8 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
CONSTRUCTION CORP. and KOHN PEDERSEN FOX
ASSOCIATES, P.C.,

9
10 Defendants.

11 Case No. 08-CV-6915 (DLC)

12
13 (CAPTION CONTINUED)

14
15 July 24, 2008

16
17 10:21 a.m.

18 DEPOSITION of ATHENA CURIS,
taken by Defendant, pursuant to Notice,
held at the offices of HOLLAND & KNIGHT
LLP, 195 Broadway, New York, New York
before Wayne Hock, a Notary Public of the
State of New York.

1 A. Curis

2 asking, please let me know that and I
3 will be happy to rephrase it.

4 Q. Are you currently employed?

5 A. Yes.

6 Q. Who is your employer?

7 A. I'm self-employed, Fox
8 Industries.

9 Q. You say self-employed.

10 A. Are you the owner of that
11 company?

12 A. One of the principals, yes.

13 Q. Who are the other principals?

14 A. Steve Plagianos.

15 Q. Where is Fox Industries located?

16 A. One Commerce Street in Brooklyn.

17 Q. How long have you been employed
18 by Fox Industries?

19 A. From September of 2002.

20 Q. And in September of 2002, were
21 you a principal of Fox Industries?

22 A. Yes.

23 Q. Where were you employed prior to
24 Fox Industries?

25 A. Trataros Construction.

1 A. Curis

2 Q. How long were you employed at
3 Trataros Construction?

4 A. On or about fifteen years.

5 Q. When you started at Trataros
6 Construction, I'm assuming it would have
7 been about 1987; does that sound right?

8 A. On or about, yeah.

9 Q. When you started at Trataros,
10 what was your title or position?

11 A. I was an estimator.

12 Q. For how long were you an
13 estimator?

14 A. About a year.

15 Q. And after that year, did your
16 job title change?

17 A. Yes, it did.

18 Q. And what did it change to?

19 A. Project coordinator.

20 Q. And how long did you hold that
21 title?

22 A. Several years, four or five
23 years.

24 Q. And at the end of that four or
25 five-year period, did your title then

1 A. Curis

2 change again?

3 A. Yes, it did.

4 Q. What did it change to?

5 A. Project manager.

6 Q. How long did you hold that
7 title?

8 A. Pretty much until the end of my
9 time with Trataros.

10 Q. When did you leave Trataros?

11 A. Just prior to Fox Industries
12 being incorporated.

13 Q. Why did you leave Trataros?

14 A. Trataros was no longer in
15 business.

16 Q. Were you at any time a principal
17 of Trataros Construction?

18 A. No.

19 Q. Do you know who the principals
20 of Trataros Construction were?

21 A. Gus Trataros.

22 Q. Anyone else?

23 A. I'm not really sure.

24 Q. Did Steve Plagianos work for
25 Trataros when you were there?

1 A. Curis

2 Q. What was your first job while
3 you -- after you got out of Pratt
4 Institute?

5 A. Breger Terjesen.

6 Q. When you left Trataros
7 Construction, was it still a going
8 concern?

9 MS. BONACCI: Objection.

10 THE WITNESS: I'm not sure what
11 happens here.

12 MS. BONACCI: I'll make an
13 objection because I have an issue with
14 the way the question is asked or the
15 form of it and then, if you still
16 understand the question, then you
17 would answer it if you still
18 understand it. If you don't
19 understand it, ask him to --

20 A. Please clarify.

21 Q. When you left Trataros, were
22 they still in business?

23 A. No.

24 Q. When did Trataros' business
25 cease?

1 A. Curis

2 A. I believe it was sometime in
3 2002, early 2003.

4 Q. At the time you left Trataros
5 did any employees remain after you had
6 left?

7 A. I believe perhaps my husband may
8 have still been there for a month or so.

9 Q. Do you know why Trataros'
10 principals closed the business?

11 MS. BONACCI: Objection.

12 A. I don't know the specific
13 reason.

14 Q. Do you know if it involved
15 financial issues?

16 A. I don't know that.

17 Q. Do you know what became of
18 Trataros' offices after the company went
19 out of business?

20 A. Could you please rephrase it?

21 Q. Sure.

22 What became of Trataros'
23 office --

24 MR. FROESSEL: Withdrawn.

25 Q. Where was Trataros' office

1 A. Curis

2 located?

3 A. 64th Street in Brooklyn.

4 Q. Is that where you were
5 headquartered pretty much until the day
6 you left?

7 A. I was pretty much in the field,
8 but that's where the main office was, yes.

9 Q. Do you know what date that main
10 office closed?

11 A. I don't know the exact date, no.

12 Q. Do you know -- did anyone stay
13 behind to clean out the office?

14 A. I don't know that.

15 Q. Did Trataros keep books or
16 records in the office at 64th Street?

17 A. Yes, they did.

18 Q. Do you know what became of those
19 records?

20 A. I believe the attorneys have
21 those records.

22 Q. What's the basis for your
23 belief?

24 A. I've seen files in Ms. Bonacci's
25 office. In addition, I had arranged for

1 A. Curis

2 subject matter of the deposition notice

3 with him?

4 A. No.

5 MR. FROESSEL: Mark this as

6 DASNY 20.

7 (Whereupon, a document entitled
8 Contract was marked DASNY Exhibit 20
9 for identification.)

10 MR. FROESSEL: For the record,
11 we've marked as DASNY Exhibit 20 a
12 contract dated as of August 27, 1998.

13 Q. Ms. Curis, have you ever seen
14 this document before?

15 A. Yes, I have.

16 Q. Can you tell me what it is.

17 A. It's contract sixteen on the
18 Baruch College project.

19 Q. And this was a contract between
20 Trataros and the Dormitory Authority of
21 the State of New York; correct?

22 A. Correct.

23 Q. Did you personally have any
24 involvement in the execution of Trataros'
25 work under this contract?

1 A. Curis

2 A. Yes, I did.

3 Q. What was your involvement?

4 A. I was project manager for
5 contract sixteen.

6 Q. Were you the project manager for
7 contract sixteen throughout the entire
8 duration of that work?

9 A. Yes.

10 Q. Did Trataros have any other
11 employees with responsibilities on
12 contract sixteen at the project?

13 A. Yes.

14 Q. Can you tell me who they were,
15 please.

16 A. Ramesh, the last name is very
17 long, there was Walter Bartels, there was
18 John Clarke, Tom Spinthourakis, Dino
19 Liapes, Bea Fioriello.

20 Q. Was there anyone else you
21 recall?

22 A. There may have been, I just
23 don't recall specifically.

24 Q. What was John Clarke's title
25 with respect to the Baruch College

1 A. Curis

2 A. No.

3 Q. How about John Clarke, have you
4 spoken with him since you left Trataros?

5 A. No.

6 Q. How about Dino Liapes, do you
7 know where he's currently employed?

8 A. Yes, I do.

9 Q. Where is he employed?

10 A. At a Dunkin' Donuts in Brooklyn.

11 Q. When's the last time you spoke
12 with Dino Liapes?

13 A. A year or two.

14 Q. Did Trataros do any other work
15 at Baruch College beside the work done
16 under contract sixteen?

17 A. Yes, we were also under contract
18 fifteen.

19 Q. Did John Clarke have any duties
20 with respect to Trataros' work under
21 contract fifteen?

22 A. The same as contract sixteen.

23 Q. The same duties?

24 A. Yes.

25 Q. Did Walter Bartels have any

1 A. Curis

2 Q. Did Trataros enter into contract
3 fifteen before it entered into contract
4 sixteen?

5 A. Yes.

6 Q. And had work under contract
7 fifteen begun at the project before the
8 contract sixteen work started?

9 A. Yes.

10 Q. About how long before the
11 contract sixteen work started would you
12 say the contract fifteen work began,
13 roughly?

14 A. I don't know.

15 Q. If you look at DASNY Exhibit 20
16 and turn about seven pages in, you'll see
17 there's a specifications and drawings
18 listing.

19 A. Yes.

20 Q. On the first page of that
21 listing, do you see there's a
22 section 03551, cementitious floor
23 leveling?

24 A. Yes.

25 Q. Was that specification

1 A. Curis

2 incorporated into Trataros' contract

3 sixteen?

4 A. Yes.

5 Q. If you turn to the next page,
6 toward the bottom do you see where it says
7 section 09420, epoxy terrazzo?

8 A. Yes.

9 Q. Was that specification, the
10 epoxy terrazzo spec, incorporated into
11 Trataros' contract sixteen work?

12 A. Yes.

13 MR. FROESSEL: Let's mark this as
14 DASNY Exhibit 21, please.

15 (Whereupon, a document entitled
16 General Conditions was marked DASNY
17 Exhibit 21 for identification.)

18 MR. FROESSEL: For the record,
19 we've marked as DASNY Exhibit 21,
20 which is a document entitled General
21 Conditions.

22 Q. Ms. Curis, I'd ask you to please
23 let me know if you've ever seen that
24 document before.

25 A. Yes, I have.

1 A. Curis

2 Q. Could you tell me what that
3 document is.

4 A. It's the general conditions for
5 the project.

6 Q. Specifically were these general
7 conditions applicable to contract sixteen?

8 A. They're pretty much boilerplate,
9 so it would be more than likely similar or
10 the same to contract fifteen, also.

11 Q. As you sit here today, do you
12 have any reason to believe that these are
13 not the general conditions that were
14 applicable to contract sixteen?

15 A. No.

16 Q. If you turn to page six in the
17 general conditions of Exhibit 21. At the
18 top of the page you'll see there's a
19 subparagraph D which says, "the contractor
20 shall develop and implement quality
21 control plans to ensure itself and the
22 owner that all work performed by the
23 contractor and its subcontractors complies
24 fully with all contract requirements."

25 Do you see that language?

1 A. Curis

2 had been there --

3 MR. FROESSEL: Withdrawn.

4 Q. Do you recall how long Walter,
5 Tom, and Dino had been working at the
6 Baruch College project on the contract
7 fifteen work before the contract sixteen
8 work started?

9 MS. BONACCI: Objection.

10 A. I don't know.

11 Q. If you turn to page eighteen of
12 DASNY Exhibit 21, please.

13 Do you see at the bottom of the
14 page there's an article twelve,
15 subcontracts?

16 A. Yes.

17 Q. And do you see section 12.01,
18 subsection C where it says, "the
19 contractor shall be fully responsible for
20 the work, acts, and omissions of
21 subcontractors?"

22 A. Yes, I do.

23 Q. In connection with the
24 self-leveling underlayment and the epoxy
25 terrazzo, did Trataros employ any

1 A. Curis

2 subcontractors?

3 A. Yes, we did.

4 Q. Who were they?

5 A. For the terrazzo, it was
6 Crocetti. And for the underlayment,
7 Bartec. Crocetti also did some
8 underlayment and I believe Klepp Floors
9 did some underlayment, also.

10 MS. SMITH: Could you read the

11 last answer, please.

12 (Whereupon the requested portion
13 was read back by the reporter)

14 Q. In what areas did Klepp Floors
15 put down self-leveling underlayment?

16 MS. BONACCI: Objection.

17 A. I believe it was the gymnasium
18 area.

19 Q. Is that an area with a wood
20 floor?

21 A. I believe so.

22 Q. To your knowledge, did Klepp put
23 down any self-leveling underlayment in
24 areas that received epoxy terrazzo?

25 A. I don't believe so.

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of July, 2008.

Wayne Hock

VERITEXT REPORTING COMPANY

213

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 _____
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)

16 _____
17 July 25, 2008

18 10:12 a.m.

19 CONTINUED DEPOSITION of ATHENA
20 CURIS, taken by Defendant, pursuant to
21 Notice, held at the offices of HOLLAND &
22 KNIGHT LLP, 195 Broadway, New York, New
23 York before Wayne Hock, a Notary Public of
24 the State of New York.

1 A. Curis

2 MR. FROESSEL: If we could mark
3 that as DASNY Exhibit 50, please.

4 (Whereupon, a letter dated
5 May 13, 2002 was marked DASNY
6 Exhibit 50 for identification.)

7 MR. FROESSEL: For the record,
8 we've marked as DASNY Exhibit 50 a
9 letter on TDX Construction letterhead
10 dated May 13, 2002. It's addressed to
11 Trataros Construction.

12 Q. Ms. Curis, have you ever seen
13 this letter before?

14 A. Just give me a moment.

15 Q. Sure, take your time.

16 A. (Reviewing).

17 More than likely.

18 Q. Did Trataros respond to this
19 letter from TDX?

20 A. I really can't say with any
21 specifics unless I see some documents.

22 Q. Did Trataros still have a field
23 office at Baruch College in May of 2002?

24 A. I don't know the specific dates,
25 but I know our field office was vacated

1 A. Curis

2 sometime between occupancy between the
3 upper levels and prior to occupancy in the
4 basement.

5 Q. But you don't recall the time
6 frames in terms of months and years?

7 A. Unfortunately, no. Time flies
8 when you're having fun.

9 Q. That's what they say.

10 You stated yesterday that you
11 became a principal of Fox Industries
12 sometime in 2002; is that correct?

13 A. Correct, September of 2002.

14 Q. Were you ever simultaneously a
15 principal of Fox Industries and an
16 employee of Trataros?

17 MS. BONACCI: Objection to form.

18 A. There may have been a minor
19 overlap.

20 Q. When you say, "minor," is that
21 in terms of weeks, months?

22 A. Probably weeks to a month or so.

23 Q. Do you have any knowledge of a
24 financing agreement between Travelers
25 Casualty and Surety Company and Trataros?

1 A. Curis

2 limiting your knowledge just you know they
3 were kept in the office?

4 A. I know they were kept in the
5 office and I know they were separated by
6 job, by contract.

7 Q. In terms of what was maintained
8 at the field office, were these
9 certificates at least maintained there for
10 the subcontractors?

11 A. Not necessarily.

12 Q. Do you have any particular
13 knowledge as to the Crocetti insurance
14 certificate, was that maintained at the
15 field office?

16 A. I don't know that specifically.
17 But for me to have requested a renewal, I
18 must have seen it, an existing
19 certificate.

20 MR. THELANDER: I'm going to show
21 you T86.

22 (Whereupon, a letter dated
23 March 7, 2003 was marked Exhibit T86
24 for identification.)

25 Q. I'm going to show you a document

452

1 A. Curis

2 marked T86. It is a letter with
3 enclosures from TDX to Trataros dated
4 March 7, 2003.

5 Take your time. Let me know
6 when you've completed looking at it.

7 A. (Reviewing).

8 Okay.

9 Q. Do you recall ever seeing this
10 document before today?

11 A. Not at the time of the writing
12 of the document, no.

13 Q. But have you seen it prior to
14 today?

15 A. Yes.

16 Q. Could you tell me what your
17 understanding of this document consists
18 of?

19 A. Quite frankly, Trataros was not
20 in business at this time. I was no longer
21 an employee of Trataros as of the date of
22 this correspondence.

23 Do you want me to read it now
24 and give you an understanding of what I
25 see it is?

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 A. Curis

2 Q. Sure.

3 My confusion, I guess, is
4 because it's still addressed to you.

5 A. Again, I don't even think
6 Trataros was in business at the time of
7 this correspondence. It's regarding some
8 Testwell laboratory results.

9 Q. Does it identify any problems or
10 anything with what you just identified?

11 MS. BONACCI: Objection to form.

12 MR. PLATEK: Join.

13 A. Uplifting and debonding.

14 Q. Uplifting and debonding?

15 A. That's what's identified as the
16 reference.

17 Q. Just so I'm correct, you were
18 employed at Trataros up until September of
19 2002?

20 A. On or about, yes.

21 Q. This document is marked as
22 DASNY 36.

23 You've seen this document prior
24 to today; have you not?

25 A. Yes.

1 A. Curis

2 A. I would probably first speak
3 with John Clarke.

4 Q. Do you recall ever speaking to
5 John Clarke about this DASNY 50 letter in
6 particular?

7 A. I have no recollection of this
8 letter as I stated previously.

9 Q. Do you recall the time period
10 February, 2002 to May, 2002 speaking to
11 other employees of Trataros with regard to
12 communications with TDX about problems
13 with terrazzo?

14 MS. BONACCI: Objection to form.

15 MR. ZICHELLO: Objection to form.

16 A. I don't have any specific
17 recollection.

18 Q. You don't recall?

19 A. I don't have any specific
20 recollection.

21 Q. At some point in time did you,
22 yourself, ever consider contacting the
23 Trataros insurer with regard to the
24 possibility of an insurance claim?

25 A. That's not my responsibility.

1 A. Curis

2 And there was no issue for a claim. There
3 was no -- I was not aware of any uplifting
4 terrazzo, you know, other than the areas
5 that were isolated incidents and repairs
6 that were done during the course of the
7 project.

8 Q. Who was in charge of deciding
9 whether or not to submit a claim to
10 Trataros' insurer for this project?

11 A. I don't know.

12 Q. Did you ever overhear any
13 conversations between any other Trataros
14 employees with regard to submitting any
15 sort of insurance claim to Trataros'
16 insurer?

17 A. I have no recollection of that.

18 Q. Do you have any recollection
19 about Trataros reporting a claim to any
20 insurer of any of the subcontractors in
21 contract sixteen?

22 A. I don't know. I don't have
23 knowledge of that.

24 MR. THELANDER: Thank you.

25 That's all I have.

1
2 CERTIFICATION BY REPORTER
34 I, Wayne Hock, a Notary Public of the
5 State of New York, do hereby certify:6 That the testimony in the within
7 proceeding was held before me at the
8 aforesaid time and place;9 That said witness was duly sworn
10 before the commencement of the testimony,
11 and that the testimony was taken
12 stenographically by me, then transcribed
13 under my supervision, and that the within
14 transcript is a true record of the
15 testimony of said witness.16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, that I am not
19 interested directly or indirectly in the
20 matter in controversy, nor am I in the
21 employ of any of the counsel.22 IN WITNESS WHEREOF, I have hereunto
23 set my hand this 29th day of July
24 , 2008.25 

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400